

1944

106

BARRETT CASE, APPELLANT

JOHN EDWARD BARRETT, ATTORNEY GENERAL OF THE  
STATE OF NEW YORK, AND JAMES H. BARTON, AS  
RESPONDENTS IN THE COURT OF NEW YORK

APPEAL FROM THE DECISION OF THE COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK

1944-1945

(30,710)

(29,715)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 405

HARRY SATZ, APPELLANT,

vs.

CARL SHERMAN, AS ATTORNEY GENERAL OF THE  
STATE OF NEW YORK, AND JOAB H. BANTON, AS  
DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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[fol. 1] **DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

In Equity

HARRY SATZ, Complainant,  
against

CARL SHERMAN, as Attorney General of the State of New York, and  
Joab H. Banton, as District Attorney of the County of New York,  
Defendants

RULE TO SHOW CAUSE—Filed Feb. 20, 1923

Upon the bill of complaint and affidavit of David L. Podell hereto annexed, duly verified the 12th day of January, 1923, let the defendants and each of them appear at a stated term of this court to be composed of Judges in accordance with Section 266, Judicial Code amended (Section 1243 of the United States Compiled Statutes) to be held at the United States Court House in the Old Post Office Building on the 29th day of January, 1923, at 10:30 A. M. of that day or as soon thereafter as counsel can be heard and show cause why an order should not be made herein enjoining and restraining the defendant Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton as District Attorney of the County of New York, from instituting proceedings of any kind for any act done or committed or omitted by the complainant, its officers and agents, and why the complainant should not have such other and further relief as to the court may seem just and equitable.

Service of a copy of this order on the defendants on or before the 19th day of January, 1923, shall be deemed sufficient.

Dated New York, January 17, 1923.

Jno. C. Knox, U. S. D. J.

[fol. 2] IN UNITED STATES DISTRICT COURT

STATE OF NEW YORK,  
County of New York,  
City of New York, ss:

AFFIDAVIT OF DAVID L. PODELL

David L. Podell, being duly sworn, deposes and says that he is an attorney-at-law and represents the complainant in the above entitled action. That he has had under consideration Chapters 580 and 581 of the Laws of 1922 of the State of New York which require the labeling for meat products as kosher or nonkosher in a man-

ner more fully set forth in paragraphs Sixth and Seventh of the bill of complaint annexed hereto. The deponent verily believes that the said enactments are void and unconstitutional in that they deprive the complainant of property without due process of law, in violation of Section 1, Article 14 of the Constitution of the United States and deny to the complainant the equal protection of the law, in violation of Section 1, Article 14 of the Constitution of the United States, and unreasonably interfere with the interstate trade and commerce of the complainant, in violation of Section 8, Article 1 of the Constitution of the United States.

That by reason of the fact that a serious question of constitutional law is involved, it is of the utmost importance and of public concern that this application be speedily heard in order that the rights and interests of the parties may be determined. No previous application has been made for this rule to show cause in this suit.

Wherefore, a rule to show cause is sought returnable within 14 days.

DAVID L. PODELL.

Sworn to before me this 12th day of January, 1923. Benjamin S. Kirsh. Benjamin S. Kirsh, Notary Public, New York County, No. 416. Reg. No. 4377. Commission expires March 30th, 1924.

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[fol. 3] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

#### BILL OF COMPLAINT

To the honorable judges of the District Court of the United States for the Southern District of New York:

Harry Satz, brings this, his bill of complaint against Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton, as District Attorney of the County of New York in the State of New York and thereupon your orator complains and says:

First. That for some time last past, he has carried on a general delicatessen and provision supply business which embraces the purchase and sale of various delicatessen and meat products and preparations and is now conducting the same.

Second. Your orator further says that during that time he has invested large amounts of money in building up and thoroughly establishing a large and lucrative trade among his customers in the said commodities and that at the present time there are many hundreds of such customers who are buying and consuming the said

[fol. 4] delicatessen meat prepared and sold by your orator as aforesaid. Your orator's gross annual sales amount to \$20,000.

Third. Your orator purchases and sells only such delicatessen and meat preparations for human consumption as are approved under the laws and regulations of the Department of Agriculture and bear the government label or seal as being clean, pure, wholesome, and fit for human food. That any meat or meat commodity, whether raw or prepared, which has not passed a rigid inspection, and which does not receive proper approval under government supervision, or does not bear a government label, is not purchased or sold as food by your orator.

Fourth. That such delicatessen and meat preparations have come to be used very extensively by the public throughout the City of New York, and the good name, good will and trade thus established is of very great value to your orator and far exceeds the sum of \$3,000. Your orator has thereby become well and favorably known to the trade and to his customers as producing a desirable wholesome commodity, properly inspected and approved under government supervision, and entirely fit and desirable for human consumption.

Fifth. Your orator further shows: That the Legislature of the State of New York at its 1915 session adopted an Act, known as Subdivision 4 of Sec. 435 of the Penal Law, which was duly approved and went into effect on the 1st day of September, 1915, which law provided as follows:

"A person, who, with intent to defraud, sells or exposes for sale any meat or meat preparation, and falsely represents the same to be kosher, or as having been prepared under and of a product or product [fol. 5] icts sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language, is guilty of a misdemeanor."

Sixth. Your orator further says; That the Legislature of the State of New York, at its 1922 session, passed an Act "to amend the Penal Law in relation to the sale and offering for sale of kosher meat or meat preparations," which Act was approved April 11th, 1922 and became Chapter 580 of the Laws of 1922 of the State of New York. That said Act provides:

"Section 1. The penal law is hereby amended by inserting therein a new section, to follow section four hundred and thirty-five, to be section four hundred and thirty-five-a, to read as follows:

"435-a. Sale of kosher meat and meat preparation.—A person, who, with intent to defraud sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements;

or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language; or sells or exposes for sale in the same place of business both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height 'kosher and nonkosher meat sold here;' or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat preparation, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' 'nonkosher meat,' as the same may be, is guilty of a misdemeanor,

Sec. 2. This act shall take effect September first, nineteen hundred and twenty-two."

Seventh. Your orator further shows: That the Legislature of the State of New York, at its 1922 session, passed an Act to amend the Penal Law in relation to the sale of kosher meat or meat preparations, which Act was approved on April 11th, 1922, and thereupon became Chapter 581 of the Laws of 1922 of the State of New York. That said Act provides:

"Section 1. Subdivision four of section four hundred and thirty-five of the penal law is hereby amended to read as follows:

"4. Sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, 'kosher and nonkosher meat sold here;' or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat products who fails to display over such meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' or 'nonkosher meat,' as the case may be.  
[fol. 7] Sec. 2. This act shall take effect immediately.

Eighth. And your orator further shows: That the phrase "orthodox Hebrew religious requirements," as used in all of the above enactments, is vague, indefinite, uncertain and incapable of correct and common definition.

Ninth. Your orator further shows: That the said term "kosher" used in all of said enactments is a word of the Hebrew language, and is likewise vague, indefinite uncertain, and incapable of correct and common definition. That its meaning is essentially based upon the phrase "orthodox Hebrew religious requirements."

Tenth. And your orator further shows: That where used in a strictly Hebrew religious sense, the term "kosher" may be described as clean, fit, proper, according to the orthodox Hebrew religious requirements, and the term "not kosher" may be described as meaning unclean, unfit, and improper according to the orthodox Hebrew religious requirements.

Eleventh. Your orator is advised by his counsel, and *therefrom* avers, that under the amendments above set forth, any delicatessen owner who sells both kosher and nonkosher meat commodities in his premises will be obligated to determine which of said products are kosher and which are not kosher, and likewise will be obligated to label or post a sign in four inch block letters upon all such commodities exposed for sale in the same place of business identifying such individual packages as kosher or not kosher, whichever the case may be. That all such delicatessen owners who sell both kosher and [fol. 8] nonkosher meats will be required to post a sign upon their windows, or show windows, or in their display advertising, announcing that both kosher and nonkosher meats are sold in the said premises.

Twelfth. Your orator is further advised and therefore avers, that the defendant Carl Sherman is Attorney General of the State of New York, and therefore the prosecuting officer for the said State, and the defendant Joab H. Banton is the District Attorney for the County of New York, and therefore the prosecuting officer for the said County, and that the said defendants have threatened to prosecute all complaints against persons or concerns engaged as dealers, delicatessen owners, butchers, or otherwise in the sale of raw or prepared meat commodities, who are charged with violating the provisions of the statutes hereinbefore referred to.

Your orator further shows that by reason of the aforesaid threats of prosecution on the part of the defendants herein, and by reason of the fear inspired by the enactments and by the requirements of the above laws, your orator when called upon at his peril to determine whether any meats or meat products are kosher or not kosher and to label the same in accordance with the requirements of the statute herein set forth, has decided and will continue to decide that the products sold by your complainant are not kosher, to the great detriment and injury of your orator's good will and established trade. That such determination and decision on the part of your orator has been and will be entirely induced by the fear that some Judge or jury might determine that the Jewish Law or the [fol. 9] customs, traditions, and precedents of the orthodox Hebrew religious requirements necessitate that such meat as your orator sells as kosher are not kosher. That as your orator has fully set forth above, any such meat or meat products as are sold from your orator's premises with a label "kosher" thereon are according to the best information and belief of your orator prepared in strict accordance with what your orator honestly believes to be the orthodox Hebrew religious requirements in so far as it is humanly possible for your orator to determine what such requirements are. In any event, your



orator alleges all the meats sold and shipped from your orator's place of business are clean, wholesome, proper food commodities, carefully inspected and eminently fit and desirable for human consumption,

Thirteenth. Your orator further shows: That by reason thereof he will be irreparably damaged in serious loss, destruction, and interference with his trade and good will and with his name and business reputation, in excess of \$3,000. That he will likewise be irreparably damaged in the deprivation and loss of numbers of his customers. That the sales made by your orator will thereby be substantially lessened and decreased. That his good will will, in course of time, be destroyed. That his investment of many thousands of dollars in his plant and in his equipment and his other property, real and personal, of the kind utilized in the conduct of his business will be substantially diminished in value, if not rendered of no value at all.

[fol. 10] Fourteenth. And your orator further shows: That as your orator is advised and verily believes, more than sixty per cent of the delicatessen goods and meat preparations consumed within the borders of the State of New York comes and is derived from provision houses in States other than the State of New York. That as your orator is advised and verily believes, more than sixty per cent of the delicatessen and meat preparations consumed within the State of New York is manufactured in and prepared in states other than the State of New York. That in short, the vast bulk of the delicatessen and meat products consumed by the inhabitants and residents of the State of New York must be brought in from outside of said State, from other States of the Union.

Fifteenth. Your orator further shows: That he purchases from packers, provision manufacturers and dealers situated in States other than the State of New York, more than \$3,000.00 worth of meats every year. That your orator sells within the City of New York as well as other points within the State of New York such meat and meat products in their original unbroken packages.

Sixteenth. Your orator further shows: That unless restrained and enjoined by the order of this Court, said defendants, in their efforts to enforce the foregoing enactments will continue to threaten prosecutions of your orator and all others who do not comply with the foregoing provisions of the statute complained of and will intimidate and annoy your orator and interfere with and prevent him from selling the delicatessen goods and meat products within the County [fol. 11] of New York and that their course will be followed by other prosecuting attorneys within the State of New York, who will likewise threaten and procure prosecutions of your orator and the inevitable effect thereof will be to interfere and obstruct your orator in the conduct of his business, causing him great financial loss, interfering with his property rights in the said delicatessen and meat preparations and with his right to sell the same freely and will thereby inflict great and irreparable injury upon your orator

which it will be impossible to compensate in damages or accurately to ascertain and for which there is no adequate legal remedy. That your orator has already discontinued purchasing meats and meat preparations from certain packers, provision manufacturers, and dealers because of fear of criminal prosecution induced by the threats of defendants as aforesaid, that prosecutions will follow if meats are not properly labeled in accordance with the statutes complained of and your orator fears that if he erroneously labels said meat and delicatessen products and preparations he will expose himself to criminal prosecution.

Seventeenth. And your orator further shows: That the irreparable injury to and destruction of the property and property rights and the trade and good will of your orator's customers, as above set forth, deprive your orator of his property without due process of law in violation of Section 1, Article 14 of the Constitution of the United States.

Eighteenth. And your orator further avers: Said acts of the Legislature of the State of New York, fully above set forth, are void because contrary to and in violation of so much of Section 1, Article. [fol. 12] 14 of the Constitution of the United States as provides that no state shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.

Nineteenth. And your orator further shows: That said enactments fully above set forth are also in violation of so much of Section 8 of Article 1 of the Constitution of the United States as confers upon the Congress of the United States the power to "regulate commerce with foreign nations and among the several states and with the Indian tribes", and in that said act and each of said sections will, if enforced, unreasonably interfere with commerce between the several states, and will, as heretofore alleged, interrupt and destroy the interstate commerce in which your complainant alleges he is largely engaged as aforesaid.

Twentieth. And your orator further shows: That unless a temporary injunction is issued in this cause prohibiting and restraining the defendants from doing any of the acts complained of herein pending a suit and until a final hearing thereof, said defendants will, before such final hearing, have consummated and accomplished said acts or threatened acts in whole or in part, and will have seriously interfered with and substantially destroyed plaintiff's said business and good will, thereby rendering any relief which the Court might otherwise grant upon a final hearing ineffective and of no avail.

Twenty-first. And your orator further shows: That unless re-[fol. 13] strained by an order of this Court, said defendants, will, before the hearing can be had upon said application for an injunction, proceed to prosecute the said alleged violators of the said law, and that other prosecuting attorneys within the State of New York

will follow a similar course, and before such temporary hearing can be had upon notice, will cause arrest to be made of your orator and thereby greatly and irreparably injure and disorganize your orator's said business within the State of New York.

Now, therefore, the premises being considered, may it please the Court to grant unto your orator a writ of subpoena commanding the defendants at a day therein to be inserted, to be and appear before this Honorable Court, there to answer without oath (their oaths being hereby expressly waived), all and singular of the premises, and to do and abide by such order and decree as this Honorable Court shall make therein; and until a final hearing of said cause, for as much as by reason of the premises the defendants will, unless restrained by order of this Court, take such action in the premises as will greatly injure and destroy the rights of your orator before a final hearing can be had upon the merits of this cause; and your orator further prays that your Honors will, pending said final hearing, grant a temporary injunction at such time as your Honors shall designate, restraining and forbidding the defendants, their agents, assistants, and attorneys from taking any action in the premises or from instituting any proceeding against your orator, his employees, agents, or representatives, or customers, for any alleged failure to comply with the requirements of said enactments, and enjoining and prohibiting the said defendant, during the pendency [fol. 14] of this suit and until the final hearing and determination thereof, from making any threats of prosecuting or from conducting any prosecutions of any and all persons by reason of their failure to label any of the meats sold by your orator as "not kosher," or by reason of their failure to exhibit a four inch block letter sign or any sign upon the meats or meat products sold by your orator bearing the words "not kosher," or from in any manner interfering or seeking to prevent the full, free, and unhampered sale of the products of your orator within the State of New York without labeling or designating the same as "not kosher," and from injuring the business of your orator by compelling it to be discredited in standing and reputation, and by having its merchandise branded as "nonkosher," in accordance with the requirements of said enactments.

And will your Honors grant unto your orator all such further relief as may be just and equitable in the premises.

David L. Podell, Solicitor for Complainant.

[fol. 15] Jurat showing the foregoing was duly sworn to by Harry Satz omitted in printing.

[fol. 16] STATE OF NEW YORK,  
County of New York,  
City of New York, ss:

AFFIDAVIT OF DAVID L. PODELL

David L. Podell, being duly sworn, deposes and says that he is an attorney-at-law and represents the complainant in the above entitled action. That he has had under consideration Chapters 580 and 581 of the Laws of 1922 of the State of New York which require the labeling of meat products as kosher or nonkosher in a manner more fully set forth in paragraphs Sixth and Seventh of the bill of complaint annexed hereto. The deponent verily believes that the said enactments are void and unconstitutional in that they deprive the complainant of property without due process of law, in violation of Section 1, Article 14 of the Constitution of the United States and deny to the complainant the equal protection of the law, in violation of Section 1, Article 14 of the Constitution of the United States, and unreasonably interfere with the interstate trade and commerce of the complainant, in violation of Section 8, Article 1 of the Constitution of the United States.

That by reason of the fact that a serious question of constitutional law is involved, it is of the utmost importance and of public concern that this application be speedily heard in order that the rights and interests of the parties may be determined. No previous application has been made for this rule to show cause in this suit.

Wherefore, a rule to show cause is sought returnable within — days.

Sworn to before me this — day of —, 1923. — — —.

[fol. 16½] [File endorsement omitted.]

[fol. 17] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AMENDING BILL—Filed Feb. 24, 1923

It is hereby stipulated and agreed that the paragraph marked "First" in the case entitled Harry Satz vs. Carl Sherman, et al., be amended so as to read as follows:

"First. That for some time last past he has carried on within the City of New York a general delicatessen and provision supply business which embraces the purchase and sale of various delicatessen and meat products and preparations, which to your orator's honest information and belief are kosher, and is now conducting the same."

It is further stipulated and agreed that any notices, papers, exhibits and affidavits submitted in any one of the suits above named shall be deemed to be before the Court in all of the said suits.

Dated New York, February 19, 1923.

David L. Podell, Solicitor for Complainant. Carl Sherman, as Attorney General, etc. By Samuel Hofstadter, Solicitor for Carl Sherman, etc. John Caldwell Myers, Solicitor for Joab H. Banton, etc.

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[fol. 18] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF MOTION—Filed Feb. 14, 1923

SIRS: Please take notice that the motion to dismiss the bill of complaint herein has this day been filed in the District Court of the United States for the Southern District of New York, in the office of the Clerk of the said Court, and that the said motion will be set down for hearing and brought on for argument at a term of the said Court, constituted pursuant to §266 of the Judicial Code, to be held at the Old Post Office in the City and County of New York, Southern District of New York, on the 19th day of February, 1923, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated New York, February 13, 1923.

Yours, etc., Carl Sherman, Attorney General of the State of New York. Samuel H. Hofstadter, Solicitor for Defendant Carl Sherman, as Attorney General of the State of New York, 60 Wall Street, New York City.

To Podell, Anson & Podell, Esqrs., Solicitors for Complainant, 233 Broadway, New York City.

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[fol. 19] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT

Now comes the defendant, Carl Sherman as Attorney General of the State of New York, and upon the bill of complaint herein moves that the said bill of complaint be dismissed for the following reasons and upon the following grounds, to wit:

I. That it appears upon the face of the bill of complaint that the facts stated therein are insufficient to constitute a cause of action in equity.

II. That it appears upon the face of the bill of complaint that the complainant has a plain, adequate and complete remedy at law.

III. That it does not appear upon the face of the bill of complaint, and no sufficient facts are averred therein to show, that the intervention of a court of equity and the assumption of jurisdiction by such a court is necessary or essential in order to effectually protect the property or rights of property of the complainant from great and irreparable injury or from any injury whatsoever.

[fol. 20] IV. That Chapter 233 of the Laws of 1915, as amended by Chapter 581 of the New York Laws of 1922 (Penal Law, §435, subd. 4) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article 1, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear from the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through its governmental and administrative agencies, operates or will operate to deprive or deny the complainant of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

V. That Chapter 580 of the New York Laws of 1922 (Penal Law §435-a) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear from the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through the governmental and administrative agencies, operates or will operate to deprive or deny the complainant of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

[fol. 21] VI. That it appears upon the face of the bill of complaint that to grant the relief sought by the complainant would constitute an unlawful and unconstitutional interference by the agencies of the Government of the United States with the lawful and constitutional power, right and duty of the State of New York and its governmental agencies (including the Attorney General of the State of New York) to prosecute violations of criminal statutes of the State of New York.

VII. That it appears on the face of the bill of complaint that the complainant is not within the class of persons who are or may be injured by the alleged unconstitutionality of the provisions of the statutes set forth in the bill of complaint.

VIII. That it appears upon the face of the bill of complaint that this court is without power or authority to grant the relief or to render the judgment and decree prayed for.

IX. That no sufficient facts are alleged in the bill of complaint to warrant or justify the granting of the relief prayed for or any other equitable relief.

Wherefore, for the reasons and upon the grounds aforesaid, the defendant, Carl Sherman, as Attorney General of the State of New York, respectfully moves this Court that the bill of complaint herein [fol. 22] be dismissed as to him.

Dated New York, February 8th, 1923.

Carl Sherman, Attorney General of the State of New York.  
Samuel H. Hofstadter, Solicitor for Defendant Carl Sherman, as Attorney General of the State of New York, No. 60 Wall Street, New York City.

[fol. 23] [File endorsement omitted.]

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[fol. 24] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF MOTION—Filed March 26, 1923

SIRS: Please take notice that the annexed motion to dismiss the bill of complaint herein has this day been filed in the District Court of the United States for the Southern District of New York in the office of the Clerk of the said Court, and that the said motion will be set down for hearing and brought on for argument at a term of the said Court, constituted pursuant to §266 of the Judicial Code, to be held at the Old Post Office in the City and County of New York, Southern District of New York, on the 19th day of February 1923, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated New York, February 14, 1923.

Yours, etc., Joab H. Banton, District Attorney in and for the County of New York. John Caldwell Myers, Solicitor for Defendant Joab H. Banton.

To Messrs. Podell, Ansorge & Podell, Solicitors for Complainant, 233 Broadway, New York, N. Y.



[fol. 25] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT

Now comes the defendant, Joab H. Banton, as District Attorney of the County of New York, and upon the bill of complaint herein moves that the said bill of complaint be dismissed for the following reasons and upon the following grounds, to wit:

1. That it appears upon the face of the bill of complaint that the facts stated therein are insufficient to constitute a cause of action in equity.

2. That it appears upon the face of the bill of complaint that the complainant has a plain, adequate and complete remedy at law.

3. That it does not appear upon the face of the bill of complaint, and no sufficient facts are averred therein to show, that the intervention of a court of equity and the assumption of jurisdiction by such a court is necessary or essential in order to effectually protect the property or rights or property of the complainant from great and irreparable injury or from any injury whatsoever.

[fol. 26] 4. That it appears on the face of the bill of complaint that the complainant is not within the class of persons who are or may be injured by the alleged unconstitutionality of the provisions of the statutes set forth in the bill of complaint.

5. That Chapter 233 of the Laws of 1915, as amended by Chapter 581 of the New York Laws of 1922 (Penal Law, §435, subd. 4) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear upon the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through its governmental and administrative agencies, operates or will operate to interfere unwarrantably with commerce between the several states, or to deprive or deny the complainants of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

6. That Chapter 580 of the New York Laws of 1922 (Penal Law §435-a) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear upon the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the



State of New York by and through the governmental and administrative agencies, operates or will operate to interfere unwar-[fol. 27] rantably with commerce between the several states, or to deprive or deny the complainant of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

7. That it appears upon the face of the bill of complaint that to grant the relief sought by the complainant would constitute an unlawful and unconstitutional interference by the agencies of the Government of the United States with the lawful and constitutional power, right and duty of the State of New York and its governmental agencies (including the District Attorney of the County of New York) to prosecute violations of criminal statutes of the State of New York.

8. That it appears upon the face of the bill of complaint that this court is without power or authority to grant the relief or to render the judgment and decree prayed for.

9. That no sufficient facts are alleged in the bill of complaint to warrant or justify the granting of the relief prayed for or any other equitable relief.

Wherefore, for the reasons and upon the grounds aforesaid, the defendant, Joab H. Banton, as District Attorney of the County of New York, respectfully moves this Court that the bill of complaint herein be dismissed as to him.

Dated February 14, 1923.

Joab H. Banton, District Attorney of the County of New York. John Caldwell Myers, Solicitor for Defendant Joab H. Banton, as District Attorney of the County of New York, 32 Franklin Street, New York, N. Y.

[fols. 28-50] [File endorsement omitted.]

[fol. 51]

UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING INJUNCTION AND DISMISSING BILL—Filed April 25, 1923

This cause having come on to be heard on the order to show cause why a preliminary injunction should not issue as prayed for in the bill of complaint and on the motion made by the respective defendants to dismiss the bill of complaint, and the Court having heard the arguments of David L. Podell, Esq., Solicitor for the complainant, Samuel H. Hofstadter, Esq., Solicitor for the defendant

Carl Sherman, as Attorney General of the State of New York, and John Caldwell Myers, Esq., Solicitor for the defendant Joab H. Banton, District Attorney of New York County, and due deliberation having been had, it is

Ordered that the motion for an injunction pendente lite be and it hereby is denied; and it is

Further ordered that the bill of complaint herein be and it hereby is dismissed.

Dated New York, April 25, 1923.

Enter.

Martin T. Mantor, C. J. Learned Hand, D. J. Jno. C. Knox, D. J.

[fol. 52] [File endorsement omitted.]

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[fol. 53] UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL

To the Honorable Julian W. Mack, U. S. Circuit Judge:

The above named appellant respectfully shows:

That he considers himself aggrieved by the order made and entered in the United States District Court for the Southern District of New York, on the 25th day of April, 1923, in the office of the Clerk of this Court, denying the motion for an injunction pendente lite and dismissing the bill of complaint and does hereby petition for an appeal from said order and decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors herewith and prays that an appeal may be allowed and citation granted and directed to the defendants herein and all other parties in interest, commanding them and each of them to appear before the Supreme Court of the United States.

Dated New York, April 26th, 1923.

Harry Satz, by David L. Podell, Solicitor for Complainant,  
Office & P. O. Address 233 Broadway, Borough of Manhattan, New York City.

The foregoing appeal and petition therefor is hereby allowed.

Dated New York, May 1, 1923.

J. W. Mack, U. S. Circuit Judge.

[fol. 54] [File endorsement omitted.]

[fol. 55]

## UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed May 1, 1923

SIRS: Please take notice that Harry Satz feeling himself aggrieved by the order and decree made and entered herein dated the 25th day of April, 1923, hereby appeals to the Supreme Court of the United States, to be holden at the Capitol, in the City of Washington, in the District of Columbia, from the said order denying the motion for an injunction pendente lite and dismissing the bill of complaint and from each and every part of said order.

Dated New York, April 26th, 1923.

David L. Podell, Solicitor for Complainant, Office & P. O. Address 233 Broadway, Borough of Manhattan, New York City.

To Samuel H. Hofstadter, Esq., Solicitor for Carl Sherman, as Attorney General of the State of New York, Office & P. O. Address, 60 Wall Street, New York City; John Caldwell Myers, Esq., Solicitor for Joab H. Banton, as District Attorney of the County of New York, Office & P. O. Address 32 Franklin Street, New York City.

[fol. 56] [File endorsement omitted.]

[fol. 57]

## UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 1, 1923

Comes now the complainant and files the following Assignment of Errors upon which he relies for his appeal from the decree made by this Honorable Court on the 25th day of April, 1923, in the above entitled action dismissing the complainant's bill and denying to him the relief prayed for.

1. That the Court erred in denying the application for an injunction pendente lite.

2. That the Court erred in dismissing the bill of complaint.

3. That Chapter 580 of the Laws of 1922 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of the complainant under Section I, Article XIV of the Constitution of the United States.

4. That Chapter 581 of the Laws of 1922 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of

the complainant under section I, Article XIV, of the Constitution of the United States.

[fol. 58] 5. That Chapter 233 of the Laws of 1915 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of the complainant under Section I, Article XIV of the Constitution of the United States.

6. That Chapter 580 of the Laws of 1922 involves a stigmatization of the complainant's goods and thus destroys their value which is a deprivation of property within the meaning of Section I, Article XIV of the Constitution of the United States.

7. That Chapter 581 of the Laws of 1922 involves a stigmatization of the complainant's goods and thus destroys their value which is a deprivation of property within the meaning of Section I, Article XIV of the Constitution of the United States.

8. That Chapter 580 of the Laws of 1922 denies the complainant the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

9. That Chapter 581 of the Laws of 1922 denies the complainant the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

10. That Chapter 233 of the Laws of 1915 denies the complainant the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

11. That Chapter 580 of the Laws of 1922 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

[fol. 59] 12. That Chapter 581 of the Laws of 1922 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

13. That Chapter 233 of the Laws of 1915 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

In order that the foregoing Assignment of Errors may be and appear of record, the complainant presents the same to the Court, and prays that such disposition be made thereof as in accordance with the laws and the statutes of the United States in such cases provided, and the complainant prays for a reversal of the decretal order and decree of dismissal made and entered by said Court.

David L. Podell, Attorney and Solicitor for Complainant,  
Office & P. O. Address 233 Broadway, Borough of Manhattan, New York City.

[fol. 60] [File endorsement omitted.]

[fol. 61] CITATION IN USUAL FORM SHOWING SERVICE ON CARL SHERMAN—Filed May 3, 1923; omitted in printing

[fol. 62] [File endorsement omitted.]

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[fol. 63] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION EXTENDING TIME—Filed June 1, 1923

It is hereby stipulated and agreed by and between the Attorneys for the respective parties hereto that the return day of the Citation in the above entitled case be extended from May 31st, 1923, up to and including June 15th, 1923.

Dated New York, May 29th, 1923.

David L. Podell, Solicitor for Complainant. John Caldwell Myers, Solicitor for District Attorney Joab H. Banton. Samuel Hofstadter, Solicitor for Attorney General Carl Sherman.

The foregoing is consented to.

Dated New York, May 31st, 1923.

Alex. Gilchrist, Clerk.

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[fols. 64 & 65] BOND ON APPEAL FOR \$500—Filed June 1, 1923; omitted in printing

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[fol. 66] UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated May 3rd, 1923.

David L. Podell, Attorney for Complainant. John Caldwell Myers, Attorney for Defendant Joab H. Banton. Samuel H. Hofstadter, Attorney for Defendant Carl Sherman.

[fol. 67] UNITED STATES OF AMERICA:

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 2d day of June, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the said United States the one hundred and forty-seventh.

Alex. Gilchrist, Jr., Clerk. (Seal of District Court of the United States, Southern District of N. Y.)

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[fol. 68] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PARTS OF RECORD TO BE PRINTED—Filed July 14, 1923

Whereas, the affidavits submitted in support of the motion in the case entitled Hygrade Provision Co., Inc., E. Greenebaum Co. Inc., and Guckenheimer & Hess, Inc., Complainants, against, Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton, as District Attorney of the County of New York, Defendants, were the same as those submitted in the case of Harry Satz, Complainant, against, the same, Defendants, and

Whereas, the one opinion filed by the Court below in the Hygrade Provision Co. case covered the above entitled case,

It is hereby stipulated and agreed by and between the Attorneys for the respective parties hereto that the affidavits submitted in support of the motion, index No. 4, and the affidavits submitted in opposition, index No. 5, and the opinion of the Court, index No. 6, in the case of Hygrade Provision Co. et al., against Carl Sherman and [fol. 69] ano., may be incorporated by reference in the record of Harry Satz against Carl Sherman and ano., and that the complete

text thereof need not be set out in the papers on appeal in the above entitled case.

Dated New York, July 13th, 1923.

David L. Podell, Solicitor for Complainant. Samuel H. Hofstadter, Solicitor for Carl Sherman, as Attorney General. John Caldwell Myers, Solicitor for Joab H. Baton, as District Attorney, per F. B.

[fols. 70 & 71] [File endorsements omitted.]

Endorsed on cover: File No. 29,715. S. New York D. C. U. S. Term No. 405. Harry Satz, appellant, vs. Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton, as District Attorney of the County of New York. Filed June 29th, 1923. File No. 29,715.